

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 377 Motor Vehicle Rentals  
**SPONSOR(S):** Latvala and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee		Roth	Vickers
2) Ways & Means Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer (P2P) sharing site. These sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport.

A \$2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in Chapter 212, F.S.

The bill establishes statutory requirements for P2P vehicle-sharing, including the liabilities and insurance obligations among participants in a vehicle-sharing agreement. In summary, the bill:

- Defines terms, including “peer-to-peer vehicle sharing”, which is the authorized use of a P2P vehicle by an individual other than the P2P vehicle owner through a P2P vehicle-sharing program.
- Establishes insurance requirements for each party involved in vehicle sharing. During the period that the owner is sharing the car to another driver, the vehicle-sharing program is responsible for providing motor vehicle insurance at or above the statutory minimums for private passenger motor vehicles. It coordinates coverage if there are multiple insurance policies involved and depending on the circumstances. If the owner’s or driver’s policy lapses or is inadequate, the program is responsible for the insurance requirements.
- Authorizes motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car sharing.
- Extends the current surcharge and subsequent sales tax on the lease or rental of a motor vehicle to P2P vehicle-sharing programs.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.

The bill will likely have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis for details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a “for-hire vehicle.” A “for-hire vehicle” is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered “for hire”. The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire”.<sup>1</sup>

Florida law provides specific financial responsibility requirements to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.<sup>2</sup> The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.<sup>3</sup>

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.<sup>4</sup>

###### Peer-to-Peer Car-Sharing

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer (P2P) sharing site.<sup>5</sup> Sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Hosts typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.<sup>6</sup>

Guests also register with the P2P site. The site will conduct a background check and review the guests' driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card information if it is not already on file. At the end of the sharing period, the guest replaces any consumed fuel before returning the car to its pickup location.<sup>7</sup>

One P2P sharing website reports that its company has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to \$1 million in liability insurance.<sup>8</sup> In Florida, the same P2P company has over 611,000 residents signed up as guests and 23,000 hosts (of which 95 percent share two or fewer cars).<sup>9</sup> The average trip duration is 4.4 days and the average host earns \$300 per month.<sup>10</sup>

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<sup>1</sup> Section 320.01(15)(a), F.S.

<sup>2</sup> Section 324.032(1), F.S.

<sup>3</sup> Section 324.031, F.S.

<sup>4</sup> Section 125.01(1)(n), F.S.

<sup>5</sup> Turo, Getaround, and Drift are examples of P2P car-sharing services.

<sup>6</sup> Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (February 2015), available at <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited January 14, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Turo, *About Turo*, available at <https://turo.com/about> (last visited January 14, 2020).

<sup>9</sup> Turo, *Florida Fast Facts* (on file with the Transportation & Infrastructure Subcommittee).

<sup>10</sup> *Id.*

### Car-Sharing Service

“Car-sharing service” is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The lease, rental, or usage of a motor vehicle for a location-owned, operated, or leased by or for the benefit of an airport or airport authority is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.<sup>11</sup>

### Rental Car Surcharge

A \$2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida.<sup>12</sup> The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in Chapter 212, F.S.

The surcharge only applies to the first 30 days of the term of any lease or rental. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies. The surcharge is not imposed on leases or rentals to tax-exempt entities. Section 216.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 212.0606(2), F.S., provides that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge,<sup>13</sup> a surcharge of \$1.00 per use is imposed. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the surcharge of \$2 per day or any part of a day shall be imposed.

After deduction for administrative fees and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80 percent to the State Transportation Trust Fund;
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge are deposited into the State Transportation Trust Fund and are allocated to each Department of Transportation district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.<sup>14</sup>

### **Revenue from Rental Car Surcharge for Fiscal Years 2013-2020<sup>15</sup>**

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<sup>11</sup> Section 212.0606(2), F.S.

<sup>12</sup> Section 212.0606(1), F.S.

<sup>13</sup> This surcharge is imposed pursuant to s. 212.0606(1), F.S.

<sup>14</sup> Section 212.0606(3), F.S.

<sup>15</sup> Florida Revenue Estimating Conference, *2019 Florida Tax Handbook*, at 154, available at

<http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited January 14, 2020).

<b>Fiscal Year</b>	<b>Total** Collections</b>	<b>Annual Change %</b>	<b>State Transportation Trust Fund</b>	<b>Tourism Promotional Trust Fund</b>	<b>Florida International Trade and Promotion Trust Fund</b>
<b>2019-20</b>	182,800,000	2.58%	146,200,000	28,800,000	7,800,000
<b>2018-19*</b>	178,200,000	3.02%	142,500,000	28,100,000	7,600,000
<b>2017-18*</b>	172,700,000	-0.96%	138,200,000	27,200,000	7,300,000
<b>2016-17</b>	174,367,779	-0.93%	139,492,736	27,464,097	7,410,947
<b>2015-16</b>	176,001,151	6.37%	140,800,921	27,731,681	7,468,549
<b>2014-15</b>	165,464,220	6.41%	132,371,376	26,060,615	7,032,229
<b>2013-14</b>	155,492,431	7.58%	124,393,945	24,490,058	6,608,428

\* Estimate \*\* Excluding administrative fees and service charge

### Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.<sup>16</sup> Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.<sup>17</sup> The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.<sup>18</sup> At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.<sup>19</sup>

The required minimum amounts of BI insurance coverages are \$10,000, in the event of bodily injury to, or death of, one person, and \$20,000, in the event of bodily injury to, or death of, two or more persons.<sup>20</sup> The required minimum amount of PD insurance coverage is \$10,000, in the event of damage to property of others, or \$30,000 combined for both BI and PD coverage.<sup>21</sup> Some refer to these coverage amounts in a summary manner, i.e., \$10,000/\$20,000/\$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.<sup>22</sup> One may obtain a driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.<sup>23</sup>

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

<sup>16</sup> Section 324.251, F.S.

<sup>17</sup> Chapter 324, F.S.

<sup>18</sup> Sections 320.02 and 324.011, F.S.

<sup>19</sup> Sections 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit \$30,000 per vehicle, up to a maximum of \$120,000, with DHSMV and maintain excess insurance with limits of \$125,000/\$250,000/\$300,000. Individuals that choose to self-insure must deposit \$30,000 with DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of \$40,000 and businesses must have either an unencumbered net worth of \$40,000 for the first vehicle and \$20,000 for each additional vehicle or a sufficient net worth determined by DHSMV by rule. Currently, the applicable rule provides that \$40,000 for the first vehicle and an amount less than \$20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of \$25,000/\$50,000/\$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

<sup>20</sup> Section 324.021(7), F.S.

<sup>21</sup> Section 324.022(1), F.S.

<sup>22</sup> Section 324.0221(2), F.S. Failure to maintain PIP coverage will also result in suspension of the driver's license and vehicle registration.

<sup>23</sup> Section 324.0221(3), F.S.

Florida's Motor Vehicle No-Fault Law (No-Fault Law)<sup>24</sup> requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry \$10,000 of PIP coverage.<sup>25</sup> However, motorcycles are excluded from this requirement.

### **Effect of Proposed Changes**

The bill specifies that car-sharing services, rental companies, and P2Ps are required to collect the \$2 per day rental car surcharge plus applicable sales tax from the customer. However, a member of a car-sharing service who uses the vehicle for less than 24 hours will only pay a \$1 surcharge and there is no surcharge imposed for the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

The bill moves the imbedded definition of "car-sharing service" into a stand-alone definition and creates definitions for the terms "dealer", "motor vehicle rental company", and "peer-to-peer vehicle-sharing program".

Additionally, the bill creates a new section of law for P2P vehicle-sharing programs in the insurance code and creates definitions for, "peer-to-peer vehicle", "peer-to-peer vehicle delivery period", "peer-to-peer vehicle driver", "peer-to-peer vehicle owner", "peer-to-peer vehicle sharing", "peer-to-peer vehicle-sharing period", "peer-to-peer vehicle-sharing program agreement", "peer-to-peer vehicle-sharing start time", and "peer-to-peer vehicle-sharing termination time". These definitions clarify the insurance and liability responsibilities when a car is shared on a P2P vehicle-sharing program website.

### **Car Sharing Insurance Requirements**

The bill requires a P2P vehicle to be covered, at a minimum, by the same insurance requirements required of all car owners and rental car companies in Florida. The required minimum amounts of BI insurance coverages are \$10,000, in the event of bodily injury to, or death of, one person, and \$20,000, in the event of bodily injury to, or death of, two or more persons. The required minimum amount of PD insurance coverage is \$10,000, in the event of damage to property of others, or \$30,000 combined for both BI and PD coverage.

The bill authorizes the required insurance on the car to be satisfied by the P2P vehicle owner, the P2P vehicle driver, the P2P vehicle-sharing program, or a combination of the parties. The P2P vehicle-sharing program assumes the liability of a P2P vehicle owner for BI or PD to third parties, uninsured and underinsured motorist, or PIP losses during the P2P vehicle-sharing period in an amount stated in the P2P vehicle-sharing program. However, the P2P vehicle-sharing program does not assume liability when a P2P vehicle owner makes an intentional or fraudulent material representation or omission to the P2P vehicle-sharing program and when a P2P vehicle owner acts in concert with a P2P vehicle driver who fails to return the vehicle pursuant to the terms of the P2P vehicle-sharing program agreement.

The P2P vehicle-sharing program must ensure that during each P2P vehicle-sharing period, the P2P vehicle owner and driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than \$10,000/\$20,000/\$10,000. If a dispute exists as to who was in control of the P2P vehicle at the time of the loss and the P2P vehicle-sharing program does not have or provide required documents, the P2P vehicle-sharing program must assume primary liability for a claim when it is providing, in whole or in part, the required insurance.

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<sup>24</sup> Sections 627.730-627.7405, F.S.

<sup>25</sup> Section 627.7275, F.S. Under Florida's Financial Responsibility Law (Ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires \$10,000, per person, and \$20,000, per incident, of Bodily Injury coverage, and \$10,000 of Property Damage liability coverage.

The bill requires the P2P vehicle-sharing program, at the time a vehicle owner registers a vehicle on the site and before it is rented, to notify the P2P owner that, if the car is not paid off, using it on the P2P vehicle-sharing program's site may violate the terms of the contract with the lienholder of the vehicle. Additionally, the bill clarifies that an authorized insurer may exclude coverage and the duty to defend or indemnify any claim under the P2P vehicle owner's motor vehicle liability insurance policy.

The bill requires the P2P vehicle-sharing program to collect and verify records regarding the use of vehicles on their site including times used, fees paid by the P2P vehicle driver, and revenues received by the P2P vehicle owner. The bill also requires the P2P vehicle-sharing program's records to be made available, upon the request of the P2P vehicle owner, the P2P owner's insurer, or the P2P driver's insurer if there is a claim. Records must be retained for three years.

The bill authorizes a motor vehicle insurer that defends or indemnifies a claim arising from the operation of a P2P vehicle that is excluded under the terms of the policy to seek contribution against the P2P vehicle-sharing program for claims against the P2P vehicle owner or driver during the P2P vehicle-sharing period. Lastly, the bill authorizes a P2P vehicle-sharing program to own and maintain, as the named insured, one or more auto insurance policies for liabilities assumed by the P2P vehicle-sharing program under agreement, liability of the P2P vehicle owner, damage or loss to the P2P vehicle, or liability of the P2P vehicle driver.

### Consumer Protections

Each P2P vehicle-sharing program agreement must disclose to the P2P vehicle owner and the P2P vehicle driver:

- Any right of the P2P vehicle-sharing program to seek indemnification from the P2P vehicle owner or the P2P vehicle driver for economic loss resulting from a breach of the terms and conditions of the P2P vehicle-sharing program agreement;
- That a motor vehicle insurance policy issued to the P2P vehicle owner for the P2P vehicle or to the P2P vehicle driver does not provide a defense or indemnification for any claim asserted by the P2P vehicle-sharing program;
- That the P2P vehicle-sharing program's insurance coverage on the P2P vehicle owner and the P2P vehicle driver is in effect only during each P2P vehicle-sharing period and that, for any use of the P2P vehicle by the P2P vehicle driver after the P2P vehicle-sharing termination time, the P2P vehicle driver and the P2P vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the P2P vehicle owner or the P2P vehicle driver;
- That the P2P vehicle owner's motor vehicle liability insurance may exclude coverage for a P2P vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a P2P vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a P2P vehicle.

### Responsibility for Equipment

A P2P car sharing program has sole responsibility for any equipment that is put in or on the P2P vehicle to monitor or facilitate the P2P vehicle-sharing transaction, including a GPS system. The P2P vehicle-sharing program must indemnify and hold harmless the P2P vehicle owner for any damage to or theft of such equipment during the P2P vehicle-sharing period which is not caused by the P2P vehicle owner. The P2P vehicle-sharing program may seek indemnity from the P2P vehicle driver for any damage to or loss of such equipment which occurs outside of the P2P vehicle-sharing period.

### Automobile Safety Recalls

At the time a motor vehicle owner registers as a P2P vehicle owner on a P2P vehicle-sharing program and before the P2P vehicle owner may make a P2P vehicle available for P2P car sharing on the P2P vehicle-sharing program, the P2P vehicle-sharing program must:

- Verify that the P2P vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

- Notify the P2P vehicle owner that if the P2P vehicle owner:
  - Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a P2P vehicle on the P2P vehicle-sharing program until the safety recall repair has been made;
  - Receives an actual notice of a safety recall on a P2P vehicle while the P2P vehicle is made available on the P2P vehicle-sharing program, he or she must remove the P2P vehicle's availability on the P2P vehicle-sharing program as soon as practicable after receiving the notice of the safety recall and until the safety recall repair has been made; or
  - Receives an actual notice of a safety recall while the P2P vehicle is in the possession of a P2P vehicle driver, he or she must notify the P2P vehicle-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall so that he or she may address the safety recall repair.

#### Driver License Verification and Retention

A P2P vehicle-sharing program may not enter into a P2P vehicle-sharing program agreement with a driver unless the driver:

- Holds a driver license issued under ch. 322, F.S., which authorizes the driver to drive vehicles of the class of the P2P vehicle;
- Is a nonresident who:
  - Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the P2P vehicle; and
  - Is at least the same age as that required of a resident to drive; or
  - Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the P2P vehicle.

A P2P vehicle-sharing program must keep a record of:

- The name and address of the P2P vehicle driver;
- The driver license number of the P2P vehicle driver and of any other person who will operate the P2P vehicle; and
- The place of issuance of the driver license.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 212.0606, F.S., relating to rental car surcharge.

**Section 2:** Creates s. 627.747, F.S., relating to peer-to-peer vehicle-sharing program.

**Section 3:** Provides an effective date of July 1, 2020.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may result in an increase in revenue associated with the requirement that specified entities remit the rental car surcharge. These revenues will be deposited into the State Transportation Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund.

Additionally, the state may experience an increase in revenue from additional sales tax that is deposited into the General Revenue Fund.

##### 2. Expenditures:

The bill will likely have no impact on state government expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Counties may experience an increase in revenue associated with additional sales taxes from motor vehicle rental companies.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

P2P vehicle-sharing programs will be required to remit the rental car surcharge and appropriate sales taxes as well as comply with insurance regulations.

D. FISCAL COMMENTS:

According to the Department of Revenue (DOR), the rental car surcharge under s. 212.0606, F.S., and sales and use taxes under s. 212.05, F.S., on rental revenue generated by participating in a “Peer-to-Peer”, or other, ride-share model program, apply under current law and are currently required to be remitted to the state.<sup>26</sup>

The Revenue Estimating Conference (REC) met on November 12, 2019, and adopted a positive indeterminate impact for cash and recurring funds to the General Revenue Fund and State Transportation Trust Fund. REC found that it is unclear the extent to which the provisions of the bill are enforceable given the out-of-state nature of the current marketplace providers.<sup>27</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art. VII, s. 19 of the Florida Constitution may apply if the tax provisions in the bill are interpreted to be a new tax.

B. RULE-MAKING AUTHORITY:

DOR has stated that it will need to update Rules 12A-1.060 and 12A-1.097, as well as Chapter 12A-16, F.A.C.<sup>28</sup>

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Revenue<sup>29</sup>

DOR indicated that the bill is unclear as to who is collecting the \$1 or \$2 surcharge. It is also unclear what the surcharge amounts are for the first 24-hour rental period and for each subsequent day. DOR finds that there is an inconsistency as to whether the surcharge is imposed after the first 30 days.

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<sup>26</sup> Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019).

<sup>27</sup> Revenue Estimating Conference (November 12, 2019), p. 14.

<sup>28</sup> Department of Revenue, Agency Analysis of 2020 House Bill 377, p. 2 (November 21, 2019).

<sup>29</sup> *Id.* at 4-5.



Additionally, the use of the word “facilitate” within the definition of “rental of a motor vehicle” could be misunderstood as a sales transaction and not a traditional renting of motor vehicles.

Lastly, the deletion of the language “licensed for-hire” on line 105 could potentially cause statutory interpretation problems in the future because the bill does not make a distinction as to other loans of a motor vehicle that may or may not be subject to a rental car surcharge.

Other Comments: Office of Insurance Regulation<sup>30</sup>

The Office of Insurance Regulation (OIR) finds that it is unclear which party’s insurance policy would have primary responsibility in an accident, in what amounts, and during which phases of the program.

Additionally, OIR noted that the bill is attempting to allow exclusions of coverage in all coverage parts for the P2P vehicle owner. These exclusions would be acceptable if some other party had responsibility for the excluded coverage, i.e., if the language of the bill clearly required that the program provide this coverage instead. If no other party is required to have the coverage excluded from the peer-to-peer vehicle owner’s policy, other issues will arise.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>30</sup> Office of Insurance Regulation, Agency Analysis of 2020 Senate Bill 478, pp. 4-5 (December 4, 2019).